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SUBJECT: OVERVIEW OF HONG KONG'S ASYLUM POLICIES

Classified By: Acting Deputy Principal Officer Laurent Charbonnet. Reasons: 1.4 (b,d)

¶1. (C) Summary: Hong Kong, which is not a signatory to the United Nations Refugee Convention, does not grant asylum to refugees but allows the United Nations High Commissioner for Refugees (UNHCR) Hong Kong Office to assess all refugee claims submitted by asylum seekers. A recent doubling of asylum seekers arriving in Hong Kong has sparked concern among officials that the city might become a magnet for asylum seekers; the Government has responded by tightening visa requirements for nationals from some South Asian and African countries. The Government's stringent asylum policies are based on fear that the city's economic prosperity might be vulnerable to abuse by a flood of economic migrants posing as asylum seekers. A 2004 court ruling has forced the HKG, which is a signatory to the UN Torture Convention, to assess claims submitted by possible victims of torture independently of the UNHCR process. Critics of the HKG's asylum policies point to the 120 asylum-seekers currently in detention as evidence of the Government's callous treatment of asylum seekers; the HKG counters that these individuals are in detention because of their criminal records. Legislators from the Panel of Security and Welfare Services passed a motion in July urging the Government to cooperate with UNHCR to speed up the screening of asylum seekers and to change their policy on detention. As the majority of Hong Kongers do not appear overly sympathetic to the plight of non-ethnic Chinese asylum seekers, the Government shows no sign of changing its stance on asylum seekers in the near future. End Summary.

Hong Kong: Magnet Destination for Asylum Seekers?

¶2. (C) The Hong Kong Government (HKG) does not grant asylum to refugees, a policy rooted in the fact that Hong Kong, unlike Macau and the PRC, is not a signatory to the 1951 United Nations Convention relating to the Status of Refugees (Refugee Convention). While Hong Kong claims that it has no legal obligation under international law to offer asylum, critics of its policies say that the Government is increasingly out of step with international standards of protection normally given to asylum seekers. Accordingly, those critics have urged the HKG to reconsider its policy. Defending the HKG's position, Principal Assistant Secretary of the Security Bureau Alan Chu told us that if Hong Kong's asylum policies were liberalized, the city's economic prosperity might be vulnerable to abuse by a potential flood of economic migrants posing as asylum seekers.

¶3. (C) Fearing that Hong Kong might become a magnet destination for asylum seekers, the Government has had to take a cautious approach on asylum issues, said Chu. The

Government is also aware of the possibility of a backlash from the local community if it softened its stance towards asylum seekers and refugees, but did not do the same on the right of abode issue. Many Hong Kong families continue to be upset over Beijing's 1999 interpretation of the Basic Law, which essentially reduced the number of mainlanders eligible for right of abode in Hong Kong; others complain about the lengthy wait many families face in bringing their mainland family members to Hong Kong. Moreover, providing too many social welfare benefits to non-ethnic Chinese asylum seekers might stir up jealousy and unhappiness with the Government's policies. The HKG's fear of a more humanitarian-based asylum policy is also grounded in its experiences dealing with the economic and security impact of the arrival of 100,000 plus Vietnamese refugees during the 1970s and 1980s. Even though many Hong Kongers were refugees themselves from the mainland, or at least descendants of refugees, they do not hold much sympathy for non-ethnic Chinese refugees or asylum seekers.

UNHCR Views Role in Hong Kong as "Distorted"

¶4. (C) Monique Sokhan, Head of the United Nations High Commissioner for Refugees (UNHCR) Hong Kong Office, explained that UNHCR's mandate is to assist asylum seekers and refugees and, if necessary, arrange third country resettlement. Unfortunately, UNHCR's role in Hong Kong has been "distorted" by the Government's lack of clear asylum policies, said Sokhan. Further complicating the relationship is the HKG's decades-old claim that the United Nations owes it over HKD 1 billion dollars (approximately USD 128 million) for expenses incurred during the Vietnamese refugee crisis; UNHCR disputes this claim. Under normal circumstances, UNHCR monitors the refugee situation or assists countries in determining an

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asylum seeker's eligibility as a refugee (refugee status determination). However, because Hong Kong is not a signatory to the Refugee Convention and refuses to take a more pro-active stance on asylum issues, UNHCR has taken on the entire burden of asylum seeker adjudication as well as providing financial support to asylum seekers and refugees. While the HKG and UNHCR clearly had their differences over how to handle asylum issues, Sokhan said that the Government largely did not interfere in UNHCR operations or summarily deport asylum seekers or refugees.

High Court Rules Hong Kong Must Assess Torture Claims

¶5. (C) While Hong Kong is not a signatory to the Refugee Convention, it is, however, bound by the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention). Until a recent court ruling, the Government did not conduct one-on-one interviews with torture claimants, but assessed claims based on information provided by UNHCR (which has no mandate to assess an individual's claims under the Torture Convention). However, after a June 8, 2004 ruling by the Court of Final Appeal in the "Secretary for Security vs. Sakthevel Prabakar" case, the HKG was forced to assess a claimant's case under the Torture Convention independently and separately from the UNHCR's refugee assessment (more on this issue in paragraphs 11-13).

Rising Number of Asylum Seekers Arriving in Hong Kong...

¶6. (C) Until recently, the UNHCR was able to manage the stream of asylum seekers arriving in Hong Kong. However, with a recent doubling of asylum seekers arriving in Hong Kong, UNHCR resources may soon be overwhelmed. In the first half of 2006, the UNHCR Hong Kong office received 982 applications for asylum, compared to 998 applications in all of 2005. Furthermore, UNHCR statistics show a general upward trend since 2002: 631 asylum applications in 2001; 309 cases

in 2002; 390 cases in 2003 and 798 cases in 2004. Currently, there are 1,500 asylum seekers in Hong Kong, with approximately 160 new arrivals each month. Approximately 10-11 percent of asylum seekers in Hong Kong have been recognized as refugees, with 120 currently awaiting resettlement.

¶7. (C) The increased numbers of asylum seekers in Hong Kong are unusual and do not correspond with UNHCR's expectations of refugee flows, according to Sokhan. For example, UNHCR expected to see more Sri Lankan asylum seekers fleeing an uncertain political environment in their home country, but instead has been surprised and concerned over the number of South Asians arriving in Hong Kong from Pakistan, Nepal, India and Bangladesh. Moreover, it was unusual for many of these asylum seekers to travel to Hong Kong instead of pursuing internal flight migration first. She speculated that Hong Kong might be a logical destination for some South Asians, since it would be easier to blend into local Nepalese, Indian and Pakistani communities and to find illegal work opportunities. Sokhan said there was also anecdotal evidence that some individuals first traveled to China and were then smuggled across the border into Hong Kong.

¶8. (C) The Government believes that one explanation for the surge in asylum seekers is Hong Kong's generous visa regime. In response, the HKG has tightened visa policies for certain African and South Asian countries, Chu said. However, this has "not been effective in stopping the influx of economic migrants." He also speculated that some asylum seekers preferred to file their asylum claims in Hong Kong, which does not grant asylum. If granted refugee status by UNHCR in Hong Kong, these refugees would likely be resettled to preferred destinations such as the U.S., Canada, or Western Europe.

...Overwhelming the System

¶9. (C) Coinciding with the increase in asylum seekers, the local UNHCR office has been hit by deep budget cuts. In late 2005, the budget for UNHCR Hong Kong was cut by ten percent and then by another twenty percent in early 2006. Hong Kong, with its high cost of living, was not an ideal place to expand UNHCR operations, and priority naturally was given to offices located near refugee crises in Africa or in Southeast Asia, explained Sokhan. With asylum seekers from over 35

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nationalities, many of whom required interpretation services, the rising number of asylum seekers has overwhelmed UNHCR Hong Kong's limited resources and its caseload. The estimated wait time for a "first instance" refugee status determination is now six months, with up to one year for an appeal to be finalized.

¶10. (C) Budget cuts also forced UNHCR Hong Kong in March to cut financial assistance covering food, accommodation and transportation costs to eighty vulnerable asylum seekers, such as women and children; it will continue to provide support for those recognized as refugees and waiting for resettlement. In May, the HKG's Social Welfare Department and some local charities began to provide social welfare benefits to some asylum seekers previously assisted by UNHCR.

Torture Claimants

¶11. (C) Prior to the June 2004 court decision on the Prabakar case, an asylum seeker's claims under the Torture Convention were assessed by the Government based upon findings from the UNHCR refugee status determination. The High Court ruled that the Refugee and Torture Conventions had different criteria and the Government was legally bound to set up a

procedure separate and independent from UNHCR. According to Chu, very few individuals arrived in Hong Kong and immediately approached the Government to claim asylum under the Torture Convention; in practice, most of the 330 plus cases currently being processed by the HKG were previously rejected as refugee claimants by UNHCR, or only put forward a claim when they were caught committing an offense or when told they would be repatriated. Many asylum seekers refused by UNHCR and perhaps wanting to delay deportation back to their country of origin probably will file claims under the Torture Convention, said Chu.

¶12. (C) Chu said that while a dozen torture cases had already been formally refused by the Government, it would likely take a long time to clear the backlog of such cases. Unlike the UNHCR, whose rulings are final and free from legal challenge, claimants under the Torture Convention have the right to legally challenge the Secretary for Security's decision through the Hong Kong court system, as well have access to legal aid. Once a torture claimant's case enters the court system, final adjudication and deportation might be delayed for years, said Chu. With 1,500 asylum seekers in Hong Kong already, approximately 160 new arrivals each month, and only a 10-11 percent success rate for recognition as a refugee, the potential is high that a large number of rejected refugee claimants will file torture claims with the HKG and then clog the court system with numerous appeals.

¶13. (C) Even if the Government recognized an individual's torture claim as legitimate, it would not be legally obligated by the Torture Convention to grant asylum, arrange resettlement to a third country, or help the claimants integrate into local society, emphasized Chu. Instead, those individuals would be allowed to remain in Hong Kong pending an improvement in their home country's situation, at which point they would be deported.

No Intent to Request Basic Law Interpretation

¶14. (C) The Government has been concerned about the impact of the Prabakar ruling on its ability to handle torture claimants efficiently, said Chu, but did not intend to ask Beijing for an interpretation of the Basic Law on asylum issues. An interpretation request was a "non-starter" because of the uproar and criticism it would attract from organizations and legal professionals. Requesting assistance from Beijing on this issue would simply set a bad precedent, said Chu. Instead, the Government would work on allocating more resources, furthering cooperation with UNHCR, and speeding up the processing and assessment procedures for torture claimants.

NGOs Criticize UNHCR and Government

¶15. (C) In June, a community activist group, the Society for Community Organizations (Soco), released a survey which was highly critical of UNHCR procedures and government asylum policies. According to Soco's report, asylum seekers in Hong Kong were often denied legal advice and not provided transcripts of their UNHCR interviews or adequate

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interpretation services. Soco Community Organizer Annie Lin told us that applicants were often interviewed in a confrontational and unfairly biased manner. Lin hoped that the report and accompanying media attention on the plight of asylum seekers would improve UNHCR operations. UNHCR refuted Soco's allegations in a July 11 press release, which outlined UNHCR guidelines and procedures. According to Sokhan, Soco's report was "unprofessional" and she claimed that Lin had not conferred with UNHCR before, during, or after the survey. Moreover, said Sokhan, Soco did not understand the legal and budgetary restraints which UNHCR faced in adjudicating the numerous refugee claims in Hong Kong.

¶16. (C) Around the same period, several media reports highlighted the fact that some asylum seekers in Hong Kong were homeless and destitute because the Government did not provide sufficient financial assistance or permit them to work legally. Chu strongly rejected criticism that asylum seekers were treated inhumanely by the Government, but he also emphasized that the city did not want to be seen as a haven for asylum seekers. The Government was generous in allowing them to stay in Hong Kong in the first place while awaiting assessment of their refugee and torture claims, said Chu. He said the Government also provided some asylum seekers with accommodations, education and medical assistance, as well as a transportation allowance.

Asylum Seekers in Detention

¶17. (C) One of the more controversial aspects of Hong Kong's asylum policies is the city's detention policy. Under a May 2006 court ruling, people seeking refuge in Hong Kong under the Torture Convention are not necessarily exempt from being sent to detention centers while awaiting a decision. "It shouldn't be a crime to seek asylum. They haven't done anything wrong," Lin told the "International Herald Tribune" on July 1. However, Chu refuted the claim that torture claimants had been indiscriminately detained in large number for unwarranted reasons. The 120-plus asylum seekers currently under detention had criminal backgrounds, used forged documents to enter Hong Kong, or posed a security threat to society, said Chu.

¶18. (C) Some of the confusion leading to the detention of asylum seekers may be the result of the HKG's vague policy on detention. The Government encourages, but cannot force, all asylum seekers to submit a claim to UNHCR or the Government within the legal validity of their stays in Hong Kong; many only put in claims after their visas have expired. After filing claims, asylum seekers are then encouraged to register with the Department of Immigration so that they can be given a letter of recognizance -- which acknowledges their refugee or torture claims with UNHCR or the Government -- and grants them a proper immigration status in Hong Kong. However, what many asylum seekers do not realize is that the Department of Immigration will temporarily detain them while checking their records. If the asylum seekers do not have criminal backgrounds, they are released and asked to register on a regular basis with the Department of Immigration; they also may be eligible for social welfare assistance. If they are found to have criminal backgrounds (including immigration violations), the Government will detain the asylum seekers during adjudication of their refugee or torture claims. Many asylum seekers, fearing detention, never receive a letter of recognizance or welfare benefits and end up destitute.

Legislators Urge HKG to Cooperate with UNHCR

¶19. (C) In the wake of the negative publicity surrounding asylum issues, Legco held a special session on July 18. Legislators from the Panel of Security and Welfare Services passed a motion urging the Government to cooperate with UNHCR to speed up the screening of asylum seekers, to change their policy on detention, and to provide educational opportunities and legal aid to torture claimants. Legislator and Civic Party Vice Chairman Fernando Cheung told the "South China Morning Post" on July 17 that "the present policy is just absurd. It could take over two years for an asylum case to be processed. But once a claimant overstays his visa during the wait, he will be treated as an illegal immigrant and will be locked up if he is caught." In the past several months, there have also been a series of high profile hunger strikes and protests organized by asylum seekers and their supporters in detention centers, demanding their immediate release. While activists continue to push the Government to reconsider its stance on the Refugee Convention, the Government does not

seem likely to change its detention policy or its approach to
asylum issues.
Sakaue